

The Corporation Journal

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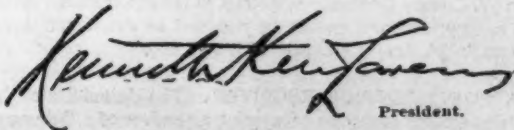
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Foreign Corporations

TOTAL loss of the cost of materials and of labor done are penalties recently incurred by corporations for failure to comply with foreign corporation laws. One of these cases is reported in this number of the Corporation Journal. Investigation of where and how your corporate clients are "doing business" in the various states may save them from similar loss as well as from litigation and fines. When you, as an attorney, are interested in the question of qualifying a foreign corporation, information that will greatly help in interpreting and applying the statutes may be had, without charge, at any of our offices.



President.

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NOTICE

THE POLICY OF THE CORPORATION TRUST COMPANY IN THE ORGANIZATION, QUALIFICATION, STATUTORY REPRESENTATION AND MAINTENANCE OF CORPORATIONS IS TO DEAL EXCLUSIVELY WITH MEMBERS OF THE BAR.

The object of The Corporation Journal is to furnish corporation attorneys, and others interested, with a brief account of current happenings, recent court decisions, new laws, etc. Lengthy discussion is avoided, the purpose being to make the publication a memorandum for the busy attorney upon which he may rely for accuracy and to which he may conveniently refer. Cross references are made to preceding pages and a cumulative index is issued from time to time. The Corporation Journal is issued monthly except in July and August. It is sent without charge to those who request to be placed upon the mailing list.

THE CORPORATION JOURNAL should be kept in a binder for convenient reference. We furnish a substantial loose-leaf binder for \$1.50.

DOMESTIC CORPORATIONS.

DELAWARE.

CAPITALIZATION OF PROSPECTIVE PROFITS. In a case before the United States Circuit Court of Appeals it was contended that \$100,000 of stock in an automobile corporation was paid for in part at least, by a transfer to the corporation of certain contracts of agency with automobile manufacturers, alleged to be worth \$50,000. With respect to this contention the Court says: "If such contracts were transferred to the corporation for its stock—even at the value subsequently placed upon them—then the stock at the best was only half paid for. But there is nothing contemporaneous with the stock transaction which indicates that the agency contracts were assigned to the corporation in part consideration for the stock. But if they were so assigned, the contracts—which later proved valueless—if property in any sense—were not property of a kind for which stock can be issued. They contained nothing more substantial than a promise of profits. Contemplated profits cannot be a basis of capitalization of a corporation under the Delaware law, for neither stockholders nor directors have any right to make a present capitalization of prospective profits. See *v. Heppenheimer, Untermeyer et al.*, 69 N. J. Eq. 36, 61 Atl. 843. *Holcombe v. Trenton White City Co.*, 80 N. J. Eq. 122, 82 Atl. 618. *John W. Cooney Company v. Arlington Hotel Company*, (Del. Ch.) 101 Atl. 879. The agency contracts cannot be regarded as consideration for the stock in any amount." *Wallace v. Weinstein*, 257 Fed. 625.

APPOINTMENT OF RECEIVER. The United States Court for the District of Delaware has authority to appoint a receiver of a Delaware corporation at the instance of a stockholder, citizen of another state, on the sole ground of the insolvency of the corporation and although the corporation has no assets in Delaware.

The Court says: "The Delaware statute enlarges the jurisdiction of the Court of Chancery over the appointment of receivers for corporations to include cases where insolvency is the sole ground for the appointment. * * * The defendant's objection that the bill fails to show any property belonging to the defendant of which possession could be properly taken by any receiver appointed herein seems to be directed to the absence of assets of the defendant company in the state of Delaware. While the point might probably be well taken if the bill had been filed in a jurisdiction other than that of the domicile of the defendant, the presence of assets of the defendant in the state of Delaware is not a prerequisite to the appointment of a receiver therefor in this state. It is not so required by the statute in question. The receiver here appointed supplants its officers in the management of all its business affairs. * * * Again, a receiver so appointed has, by virtue of section 3884 of the Revised Code of Delaware of 1915, title to all the property of the corporation wheresoever situate, except real estate situate outside the state of Delaware." *Adler v. Campeche Laguna Corporation*, 257 Fed. 789.

ILLINOIS.

FEATURES OF THE ILLINOIS CORPORATION LAW. May issue shares without par value; non-par value shares may be issued for such consideration, not less than \$5, as may be prescribed in the certificate of incorporation or as may from time to time be fixed by the board of directors, pursuant to authority conferred in the certificate; the statement of incorporation shall indicate the amount of capital to be issued at once (which shall be not less than \$1,000); one half of the capital stock having a par value and at least \$5 for each share without par value, which it is proposed to issue at once shall be paid in; one resident director required and directors must be stockholders; may hold only such real estate as may be necessary for its business; may hold stock in other companies; may have perpetual existence; all of the directors and stockholders of real estate improvement corporations shall be residents of the county in which the principal office of the corporation is located; directors may be classified; directors may hold meetings outside of the state; name shall indicate that the company is a corporation and shall not be the same or similar to that of any other corporation doing business in Illinois; must maintain an office and resident agent in the state; statement must be filed in office of Secretary of State in connection with proposed issues of stock; stock transfer book is open to inspection of stockholders; annual stockholders' meeting shall be held within 90 days after the end of the fiscal year of the corporation and must be held within the state; stockholders are authorized to exercise right of cumulative voting; unless corporation commences business within one year, its certificate shall be revoked:

COST OF ORGANIZATION IS AS FOLLOWS:

Secretary of State:

Organization Fee—1/20 of 1% of amount of authorized capital stock.
Minimum fee \$20. Shares without par value are deemed to have a value of \$100 each for the purpose of fixing the organization fee.

Annual Franchise Tax:—If corporation is organized (a) between March 1, 1920 and July 1, 1920, a franchise tax for one and one-third year;

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(b) Between July 1 of any year (after 1919) and September 30, a franchise tax equal to full amount of annual franchise tax.

(c) Between October 1 of any year (after 1919) and December 31, a franchise tax equal to $\frac{3}{4}$ of the annual franchise tax;

(d) Between January 1 of any year and last day of February, a franchise tax equal to $\frac{1}{2}$ of the annual franchise tax.

(e) Between March 1 of any year (after 1919) and June 30, a franchise tax equal to one and one-third of the annual franchise tax.

TAXATION. An annual franchise tax is payable to the Secretary of State.

At the rate of five cents on each \$100 of the properties of its authorized capital stock represented by business transacted and property located in Illinois; minimum tax is \$10.

If company has no tangible property in Illinois and is not transacting business in the state, the following fee shall be paid as an annual franchise tax:

Capital stock of \$50,000 or less.....		\$10
Capital stock of over \$50,000 but not exceeding..	\$200,000	15
Capital stock of over 200,000 but not exceeding..	500,000	20
Capital stock of over 500,000 but not exceeding...	1,000,000	50
Capital stock of over 1,000,000 but not exceeding...	10,000,000	200
Capital stock of over 10,000,000 but not exceeding...		1,000
Non-par value shares are held to have a par value of \$100.		

PROCEDURE FOR INCORPORATION.—Three or more adults, citizens of the United States at least one of whom shall be a resident of Illinois, sign, seal and acknowledge a statement of incorporation; the statement shall be filed in duplicate in the office of the Secretary of State on forms prepared and furnished by him. The statement is examined by the Secretary of State and if it is in conformity with the provisions of the act, he endorses thereon the word "filed"; upon such filing the corporation shall be deemed fully organized and may proceed to business. The Secretary of State shall mail a certificate of incorporation to the incorporators making a part of such certificate a copy of all papers filed in his office, using for that purpose duplicate copies filed therein, duly authenticated under his hand and seal of state.

This certificate shall be filed for record in the office of the recorder of deeds, of the county in which the principal office is located, within ten days after its issuance.

The directors named in the certificate of incorporation shall within 60 days after incorporation, meet, elect officers, adopt by-laws and transact other business.

WHAT THE CORPORATION TRUST COMPANY DOES to assist attorneys in the incorporation and subsequent statutory maintenance of an Illinois corporation is briefly as follows:

At the time of incorporation it ascertains, upon request, if the name can be used, and furnishes the attorney with a complete set of forms for reference, copies of statements of incorporation, and other precedents, which have been approved, files and

records the necessary papers and assists the attorney in every possible way in the organization.

It will draft and submit the statement of incorporation, by-laws and minutes of meetings and upon approval by the attorney will furnish complete facilities for incorporation, attend to the filing of the papers, the holding of the necessary meetings and return the records completed in minute book form.

Attorneys wishing to keep complete control and supervision over the organization of Illinois corporations have found it extremely convenient and expedient to use the Chicago office of The Corporation Trust Company.

Subsequent to incorporation The Corporation Trust Company furnishes a statutory office, furnishes rooms for holding stockholders' and directors' meetings or holds stockholders' meetings by proxy, gives timely notice for filing state reports and tax returns, and keeps counsel informed of changes in statutes affecting the corporate status.

For foreign corporations entering Illinois, The Corporation Trust Company drafts all documents necessary to secure authority to do business in the State and submits them to the attorney. Upon approval, it attends to their filing with the proper state officials. After qualification, it supplies the statutory agent, notifies the attorney of all State reports and taxes to be paid, and forwards blanks for reports and tax assessments. A statement containing the statutory requirements for admission of foreign corporations to do business in Illinois will be sent upon request and without charge.

An estimate of charges can be secured at our nearest office.

MICHIGAN.

LIABILITY FOR FALSE STATEMENTS IN ARTICLES OF INCORPORATION. Under Comp. Laws 1915, section 11983, requiring false representations as to character or credit to be in writing and signed by the person making them in order to support an action thereon, untrue statements as to the property of a corporation and the amount of capital stock paid in, made in the articles of association signed by an incorporator constitutes a sufficient writing to support an action for fraud and deceit against such incorporator. The State Supreme Court says: "A false statement which causes loss to another relying upon it is not exempt from an action for fraud merely because it happened to be made in articles of association. Rather, one making a false statement there ought to be held the more strictly to account, for this court has constantly tried to impress upon those forming corporations that the public have a right to rely upon the statements they make in the documents relative thereto, required to be filed and recorded in public offices for the information and guidance of those dealing with the corporation. The more solemn and formal the document, the more confidence will naturally be placed in its statements. If a person who becomes a stockholder by signing articles of association desires to avoid all chance of such a liability as this, let him see to it that the statements he signs in the corporate documents are true. * * *

"The record conclusively shows that there was not actually paid in cash the amount set forth in the articles, viz.: \$1,600, and that there was not actually paid in cash to

exceed the sum of \$1,080, and it further appears that this fact was known to the defendant. Likewise it appears conclusively that the corporation was not possessed of property actually worth \$6,200. I agree with the circuit judge that the testimony shows that the property was not worth to exceed the sum of \$1,200." *Ver Wys v. Vander Mey*, 173 N. W. 504.

NEW JERSEY.

REVOCATION OF PROXY BY SALE OF STOCK—PURCHASE OF STOCK BY HOLDER OF PROXY. The Supreme Court of New Jersey says: "This is a summary investigation of a corporate election under section 42 of the Corporation Act (Act April 21, 1896, P. L., p. 291). The controversy turns on the right to vote 242 shares standing in the name of Albert Kumpel. This right was denied by the inspectors at the election. These shares, if voted, would have changed the result. Theodore Kumpel sought to vote them by virtue of a proxy from Albert. It is not denied that Albert appeared as owner on the books of the company on the day of the election, or that the proxy was in proper form and properly executed. On the face of the papers Theodore was entitled to vote the shares. Under the rule of *Downing v. Potts*, 23 N. J. Law, 66, and the *St. Lawrence Steamboat Co. Case*, 44 N. J. Law, 529, the action of the inspectors was erroneous, and the election ought to be set aside or the contesting party put in office. The incumbents rely, not on any defect in the record title to the stock or in the proxy, but on a situation disclosed by the facts of the case as established by evidence aliunde and not legally before the inspectors of election. These facts are supposed to require the court to establish the right of the incumbents, pursuant to the injunction of section 42 of the act requiring us to give such relief in the premises as right and justice may require.

"The facts are that Albert gave the proxy to Theodore on March 24th; that afterwards, on April 5th, Theodore determined to buy the stock at Albert's request and sent Albert a check for the purchase price. Albert signed a transfer, but Theodore did not register the transfer on the books of the company, and the stock still stood in Albert's name on May 13th, the day of the election. His reason seems to have been that there was a real or supposed right of pre-emption in the company, and he desired to avoid any question as to his title to the stock. It is now argued that the proxy was revoked by the sale to Theodore. Stock is often sold while the transfer books are closed, and it would be a manifest injustice to deprive the vendee of the right to vote, which the act is at some pains to secure him, because he has bought within 20 days next preceding the election. Section 36 secures each stockholder the right to vote; it does not disfranchise stock which has been sold within 20 days next preceding the election, but only stock which has been transferred on the books. Whether the vendee shall be disfranchised is thus made to depend on his own action or inaction. There is nothing in the language to prevent the vendee, by agreement with the vendor from securing his right to vote by means of a proxy, although not yet registered as a stockholder. The law was long ago established in New York under similar legislation (*People v. Tibbets*, 4 Cow. (N. Y.) 358), and has more recently been followed in *Re Argus Co.*, 138 N. Y. 557, 579

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34 N. E. 388. This rule is in harmony with the principle that requires a trustee in case of a dry trust to give a proxy. *American National Bank v. Oriental Mills*, 17 R. I. 551, 23 Atl. 795. Granting that the sale is a technical revocation of the proxy it would be idle to require the former owner, now become a trustee of a dry trust for the unregistered vendee, to execute a new proxy, where both he and his vendee are content with the control of the voting power given by the title shown on the transfer books accompanied by the proxy. The rule is also in harmony with the policy that entitles every stockholder to the benefit of the vote of every other stockholder and intrusts the voting power to the beneficial owner. A distinction is made by the statute as Justice Depue pointed out in the *St. Lawrence Steamboat Co. Case*, between the qualification for voting at the stockholders' meeting, registration on the transfer books only, and the qualification of director, bona fide ownership of stock. A man may vote although not a bona fide owner of stock, and may vote by proxy. We see no reason why a vendor who is still registered as a stockholder cannot vote by proxy. The case is still stronger where the proxy is held by the vendee." *Thompson v. Blaisdell*, 107 Atl. 405.

CONTRACT TO REPURCHASE STOCK—ENFORCEABILITY. The defendant entered into a contract with the appellant Rosie Soos, whereby it agreed to repurchase or resell the stock to which she subscribed, at her option, in consideration of her subscription. The contract of subscription was made in the State of New York. The corporation became insolvent and the appellant demanded that the corporation repurchase the stock. The court holds that the provision for the return of the stock was not enforceable against an insolvent corporation. The effect of the exercise by the appellant of her right under the terms of the agreement to return the stock to the corporation would be to make her a creditor to share with the other creditors in the assets of the corporation. The capital stock of the corporation constitutes a trust fund for the payment of debts, and creditors are presumed to contract with the corporation upon the faith that its stock, so far as appears by its records, has been paid in and that those who appear to be stockholders are in fact stockholders and not creditors. The court held that the clause providing for the return of the stock was not enforceable. It holds, however, that this did not affect the validity of the stock subscription. To hold that the subscription was invalid would accomplish by indirection what was sought to be avoided. The rule in New York is the same as that in New Jersey and the contract entered into in New York is valid as a stock subscription except that the provision for repurchase is invalid. *Hoover Steel Ball Co. v. Schaefer Ball Bearings Co.*, 106 Atl. 471.

NEW YORK.

A CORPORATION ORGANIZED FOR PRIVATE BUSINESS CANNOT BY AMENDMENT TURN ITSELF INTO ONE ORGANIZED FOR PUBLIC SERVICE. Section 18 of the Stock Corporation Law permits any stock corporation to amend its certificate "so as to include therein any purposes, powers or provi-

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sions which at the time of such alteration may apply to corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organized under any general law of this state for a business of the same general character." The business of a private manufacturing corporation is not "of the same general character" as that of a public service corporation. People ex rel. Cayuga P. Corp. v. P. S. Comm., 226 N. Y. 527.

SALE OF CORPORATE PROPERTY TO OFFICERS. This case involves the construction of section 66 of the Stock Corporation Law. The action is for damages for the conversion of an automobile levied upon by the defendant, the city marshal. The plaintiffs claim title to the automobile under a purchase from the judgment debtor. The judgment debtor, a corporation, executed to the plaintiffs, who were three of its directors, a bill of sale of its bus route including the automobile in question. All the existing debts of the corporation were then paid. Subsequently the indebtedness was incurred upon which judgment was recovered and the levy made which is the alleged conversion in this action. The stock corporation law, section 66, provides that no corporation which has refused to pay any of its obligations shall transfer any of its property to its officers, directors or stockholders for any other consideration than the full value of the property paid in. The court held that the statute in question had no application because there were no debts outstanding against the corporation at the time that it sold its bus route and automobile to three of its directors. Section 66 has no application to a transfer where all the creditors at the time were provided for. Kimball v. Cash, 176 N. Y. Supp. 541.

WHEN RESTRICTIONS UPON TRANSFER OF STOCK ARE LEGAL. In certificates of stock it was provided, pursuant to specific power in the certificate of incorporation, that no stock should be transferred until it was first offered for sale to the other stockholders on terms and conditions to be fixed by the by-laws or by an agreement between the stockholders, but in case the offer to sell was refused, the stock would be no longer subject to the conditions.

Justice Ford in Special Term of the Supreme Court states that in his opinion these limitations are binding and legal in all respects, and says: "I have been unable to find any New York decision directly in point but there are cases which recognize the enforceability in equity of limitations upon the transferability of corporate stock. * * * In Kinnam v. Sullivan County Club, 26 N. Y. 213, it was held that a mere by-law limiting the transferability of stock was invalid although such limitations might be fixed in the certificate of incorporation. In Leggett v. Bank of Sing Sing, 24 N. Y. 283, the court upheld the lien of the bank on the stock of a shareholder by virtue of a provision in the articles of association to the effect that no share or shares shall be transferable * * * unless the shareholder making the transfer shall previously discharge all debts due by him or her to said association. * * * I have sought diligently but without success for a case impeaching the legality of reasonable restrictions upon the transfer of the stock of a corporation where they are imposed by the charter, articles of association, or certificate of incorporation, and notice of the restrictions is stamped on the

certificate of stock. All the decisions point in the other direction. If such restrictions are legal and binding, it follows that the courts have power to enforce them and afford adequate redress for any violation of them which causes or threatens damages to any one under their protection. If the remedy at law is inadequate, then equity will intervene and make such decree as justice requires to effectuate the lawful purposes of the incorporators." *Bloomington v. Bloomington*, 107 N. Y. Misc. 646.

VOTING STOCK STANDING IN THE JOINT NAMES OF EXECUTORS OR TRUSTEES. With respect to stocks in two advertising companies, a testator provided in his will that his two executors "shall vote the said shares of stock at any corporation meeting * * * by their joint action and not otherwise." With respect to this provision, Justice Erlanger says: "No discretion is vested in either of them in connection with the vote. The direction is mandatory. It does not mean that both were bound personally to attend at meetings, and even if both did attend it would not be the first instance on record where such a thing occurred. It is common knowledge that such attendance frequently happens in some of our large corporations. The fact, however, is that they could either vote the stock together personally or by proxy; but whether they voted it one way or the other, the testator made it impossible for either singly to combine with the other stockholders to the injury of the beneficial owners. Upon the death of a stockholder his administrators become vested with the legal title to the stock and they are entitled to vote it without a formal transfer on the books. *Matter of North Shore Staten Island Ferry Co.*, 63 Barb. 556. But when the legal title is vested under a will in three executors they can only vote as joint owners, and if they cannot agree as to the manner in which the shares shall be voted, they cannot vote at all. 10 Cyc. 334; *Cook Corp.* (ed. 1913), sec. 612, p. 1796. The rule applicable to trustees is not the same as in the case of executors, they are not usually concerned with the administration of the estate of the deceased, they must act jointly in dealing with the trust estate. 'In the case of a private trust, as distinguished from a public or charitable trust, where there are several trustees and all have accepted and are exercising the office, their powers, interest and authority are equal and undivided. They cannot act separately, but must act as a unit, except where authority to act is given to a majority of the trustees by statute, or by the instrument creating the trust, or possibly except in the case of an urgent emergency.' 39 Cyc. 307. Surely voting salary to an officer is not such an emergency as this contemplates. And so it has been held that when trustees cannot agree, a court has no power to interfere and direct the voting." *Townsend v. Winburn*, 107 N. Y. Misc. 443.

PENNSYLVANIA.

ISSUANCE OF STOCK FOR SERVICES. A corporation will not be permitted to cancel stock issued to a director and officer for services in reorganization, where the services in question were not rendered during his term of office. The compensation thus allowed may have been extravagant, but that is a question for the directors and not for the court to decide. *Colonial Biscuit Co. v. Orcutt*, 107 Atl. 315.

FOREIGN CORPORATIONS.

KANSAS.

NON-PAR SHARES DO NOT DISQUALIFY FOREIGN CORPORATIONS FROM ADMISSION TO THE STATE. The Supreme Court of Kansas has issued a writ of mandamus to compel the charter board to make inquiry concerning a Delaware corporation which had made application for authority to do business in the state in usual form with the exception that its certificate of incorporation provided for non-par value stock. The opinion of the court is of great interest, because of the perplexities presented by non-par value shares in this and other states.

The charter board of Kansas contended that because the shares of the North American Petroleum Company have no fixed or nominal par value, it would be difficult for the state officials to determine the amount of annual fees that the corporation should pay and that there is no means of knowing what its capital stock is without an examination of its assets. With respect to this contention the court says: "The problem of determining the solvency and *bona fide* capitalization of the plaintiff presents no unusual difficulty. The fact that the shares of its stock have no nominal par value is of little consequence. Any prudent charter board, in determining whether a foreign corporation is worthy of admission to do business in Kansas, would attach little importance to the nominal value of its shares of stock even if they have a nominal value. As in all other cases, the charter board should concern itself earnestly to ascertain the genuine capital—those assets permanently devoted to the corporate business as a basis for its business credit, and upon which its hope of profits is rationally founded. The 'lawfully issued capital' and the 'capital stock' of such corporations are the assets that it devotes to the prosecution of its business. When the value of those assets is ascertained, the fee, required to be paid by law, can be based on that portion of the assets which the corporation proposes to invest and use in the exercise and enjoyment of its corporate privileges within the state." The defendants contend that the plaintiff is not such an organization as is called a corporation in the constitution and laws of this state. This contention is based on the same facts as are the other contentions just disposed of. The answer to this contention is that corporations without capital stock and without shares of stock are not new; they are as old as corporations themselves, and have existed in England and in this country for many years; our constitution recognizes them, and we have laws for their control and government. The plaintiff can be admitted to do business in this state; and the defendants cannot refuse to make the inquiry concerning it directed by section 2136 of the General Statutes of 1915." *The North American Petroleum Company v. Richard J. Hopkins, Attorney General et al.*, 181 Pac. 625.

MICHIGAN.

LOSS OF COST OF MATERIALS AND OF LABOR DONE BECAUSE OF FAILURE TO QUALIFY AS A FOREIGN CORPORATION. The Phillips Company, a Wisconsin Corporation, without first qualifying as a foreign

corporation in Michigan, entered into a contract with the Springfield Realty Company to install a system of automatic fire sprinklers in a building located in Detroit. On failure to receive payment, the Phillips Company filed a mechanic's lien on the property. Subsequently the realty company went into bankruptcy and the property was sold, under an order of Court free and clear of the mechanic's lien. The Phillips Company appealed from the referee's decision that it was not entitled to enforce its lien, but the United States District Court upholds the referee's decision, giving full effect to the Michigan statute which provides: "No foreign corporation, subject to the provisions of this act shall be capable of making a valid contract in this state until it shall have fully complied with the requirements of this act, and at the time holds an unrevoked certificate to that effect from the secretary of state." In re Springfield Realty Co., 257 Fed. 785.

DOING BUSINESS UNDER BLUE SKY LAWS DISTINGUISHED FROM DOING BUSINESS AS FOREIGN CORPORATION. This case makes the distinction between qualification by a foreign corporation in order to carry on its business in the state and compliance with the so-called Blue Sky laws in order to secure permission to sell its stock or securities in the state. The court made the following statement: "Compliance with the Corporation Act permits a foreign corporation to 'carry on its business,' the business for which it is organized in the state; compliance with the Commission Act permits it to sell its stock and other securities. One is not in any way dependent upon the other. One foreign corporation may desire to carry on its business in the state, but may not desire to sell stock; another may desire to sell stock, but may not desire to carry on its business in the state. If a foreign corporation desires to carry on its business and also sell its stock in the state it is obvious that it must comply with both acts. It is equally obvious that if it desires to do but one of these things, it is required to comply only with the provisions of the appropriate act." *Edward v. Ioor*, 172 N. W. 620.

INSTALLATION OF AUTOMATIC FIRE SPRINKLERS CONSTITUTES "DOING BUSINESS" by a foreign corporation, where the contract contained no provisions as to where the materials or labor should be procured. The Federal Court for the Eastern District of Michigan says the question whether a particular contract is interstate or intrastate in character, must be determined by a construction of the contract, rather than by a consideration of the manner in which it has been performed by the parties thereto. "It must be borne in mind that the contract in question does not provide for the sale of an article in interstate commerce under an agreement containing a clause to the effect that the seller shall install the article in the state to which it is sent. This contract provides merely for the furnishing and installation of certain apparatus in a certain building in the state of Michigan, without any provision for the prior transportation of such apparatus from outside into this state. Therefore the cases are not here applicable which distinguish between intrastate transactions and interstate commerce in contracts providing, not only for the sale and installation of articles, but also for the transportation of such articles from one state to another." In re Springfield Realty Co., 257 Fed. 785.

MISSOURI.

FORFEITURE OF RIGHT TO SUE OR DEFEND BECAUSE OF FAILURE TO QUALIFY AS A FOREIGN CORPORATION on the part of a company "doing business" in the state is limited to a suit or action pertaining to business done in Missouri. *Republic Rubber Co., v. Adams*, 213 S. W. 80.

INCOME TAXES

For preceding references, see 4 Corporation Journal, page 29.

A Treasury Decision relates to original subscription to Victory notes (p. 466). Provisions of the regulations dealing with the cost of war facilities which may be amortized are amended in a Treasury Decision (p. 466).

A letter by the Commissioner relates to amortization claims for 1918 and for 1919, and to amended returns involving amortization (p. 466).

A letter by the Commissioner explains the duties and obligations of employers in connection with withholding in the case of non-resident aliens employed in the United States (pgs. 467 to 469).

A letter by an Assistant to the Commissioner relates to constructive receipt of income during the taxable year by a decedent prior to his death (p. 470).

A letter by the Commissioner relates to returns of information as to payments to employees in board and lodging (p. 470).

A decision by a United States District Court relates to taxability of income derived from or through a partnership (pgs. 471 to 474).

According to a letter by the Commissioner, dividends received from foreign corporations subject to income tax are exempt from normal tax (p. 474).

A letter from the Commissioner relates to additional capital stock tax imposed by Revenue Act of 1918 as a deduction (p. 474).

A Treasury Decision relates to interest on Victory notes (p. 474).

A telegram from the Commissioner explains the tax liability and withholding obligation on bond interest collected and paid in the year subsequent to that in which the interest became due and payable (p. 475).

A Treasury Decision amends Article 1567 of Regulations 45 relating to exchange of stock for other stock of no greater par value (p. 475).

A Treasury Decision amends articles of Regulations 45 relating to wages of a non-resident alien seaman derived from sources within the United States (pgs. 475 to 476).

A letter by the Commissioner relates to refund of amounts withheld from non-resident alien on status changing to that of resident (p. 476).

A Treasury Decision sets forth the procedure to be followed by collectors with respect to claims for refund or abatement (pgs. 477 to 478).

A Treasury Decision modifies Article 23, Regulations 45 in regard to basis of computation of net income (p. 479).

A decision by the United States Supreme Court holds that income from stocks and bonds located in the United States is taxable to non-resident aliens (pgs. 480 to 482).

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A decision by a United States District Court relates to simulation of income tax receipts (p. 483).

A telegram by the Commissioner states that separate ownership certificates are required for coupons of different maturity dates (p. 483).

A telegram by the Commissioner relates to withholding at the source on interest on bonds having no tax free covenant (p. 484).

A letter by the Commissioner relates to inventories of securities by a bank maintaining a department for the merchandising thereof (p. 484).

A telegram by an Assistant to the Commissioner states that ownership certificate Form 1001 should be used in connection with interest payments upon domestic bonds owned by foreign governments (p. 484).

A Treasury Decision relates to extension of time for filing returns of partnerships and personal service corporations having a fiscal year ended prior to May 31, 1919 (p. 484).

Letters by the Commissioner explain the treatment of amounts owing on installment accounts (pgs. 485 to 487).

A ruling by the Commissioner sets forth the duty of an employer to determine the status of an alien employee (p. 487).

Article 307 of Regulations 45 dealing with non-resident alien individuals entitled to personal exemption is amended and amplified (p. 488).

A telegram by the Commissioner relates to coupons of foreign owned domestic bonds purchased by a domestic corporation (p. 488).

Stock losses as losses incurred in trade is the subject of an important decision by a United States District Court (p. 489).

According to a ruling by the Commissioner, the good will of a corporation is to be taken into consideration in determining the value of its stock as of March 1, 1913 (p. 490).

A letter by the Commissioner explains withholding and tax liability in connection with credit and debit interest items involved in transactions between domestic and foreign banks (p. 491).

A Treasury Decision brings attention to legislation relating to the giving out of information contained in returns filed by taxpayers (p. 491).

A decision by a United States Circuit Court of Appeals relates to life insurance dividends to be excluded from gross income (p. 493).

Article 307 of Regulations 45 is further amended by a Treasury Decision (p. 493).

Instructions relative to acceptance of treasury certificates of indebtedness are contained in a Treasury Decision (p. 494).

A letter by the Commissioner relates to alien employees resident and non-resident (p. 495).

A letter from the Attorney General to the Secretary of the Treasury relates to compromise of penalties arising under the Income Tax Laws (pgs. 496 to 498).

Inventory losses and the time for filing claims in abatement are the subjects discussed in a letter by the Commissioner (p. 498).

The policy of the Bureau of Internal Revenue with regard to requests for rul-

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ings and advice upon abstract propositions are set forth in a statement issued by the Bureau (pgs. 499 to 500).

According to a telegram by an Acting Commissioner, there is no withholding on bond interest due prior to March 1, 1913 (p. 500).

Two new articles in regard to the determination of the fair market value and quantity of timber are added to Regulations 45 (pgs. 500 to 501).

According to a letter by an Assistant to the Commissioner, no taxable profit accrues in connection with the making of deductible charitable contributions in the form of securities which have increased in value in the hands of the donor (p. 501).

A letter by an Assistant to the Commissioner relates to tax liability of withholding obligation on bond interest collected and paid in a year subsequent to that in which the interest became due and payable (p. 501).

Letters by the Department explain in detail allowances for obsolescence of good will, trade marks and trade brands in the case of distillers, dealers in liquors, etc. (pgs. 52 to 505).

A letter by an Acting Commissioner states that old forms of ownership certificates may be accepted pending the issuance of a Treasury Decision now in course of preparation (p. 505).

A Treasury Decision gives further instructions relative to acceptance of treasury certificates of indebtedness for income and profits taxes (p. 505).

A Treasury Decision provides for relief of domestic corporations which have assumed payment of income tax in respect to tax free covenant bonds owned by non-resident aliens who are entitled to credits for personal exemption (p. 506).

A letter by an Assistant to the Commissioner relates to amount of tax paid by debtor on account of tax free covenant bond (p. 506).

Article 307 Regulations 45 dealing with non-resident alien individuals entitled to personal exemption is further amended by a treasury decision (p. 507).

(NOTE.—The page references are to our Income Tax Service, 1919, wherein the foregoing rulings and regulations are printed in full. All official matter relating to the administration of the income tax provisions of the Revenue Act of 1918 are contained in this Service. With our Federal War Tax Service and New York Income Tax Service, it is universally recognized as an authority on taxation in the United States.)

EXCESS PROFITS TAX

For preceding references, see 4 Corporation Journal, page 30.

A Treasury Decision modifies paragraphs F of the prior Treasury Decision 2662 (p. 303).

A letter by the Commissioner relates to allowance for amortization under the Munitions Manufacturers Tax Law (p. 303).

(NOTE.—The page references are to our War Tax Service, 1919, wherein the foregoing rulings and regulations are printed in full.)

CAPITAL STOCK TAX

For preceding references, see 4 Corporation Journal, page 11.

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A letter by a Deputy Commissioner relates to returns by corporations with fiscal years ending June 30th (p. 637).

A telegram by a Deputy Commissioner relates to deductions for income and excess profits taxes (p. 637).

The manner of establishing proof that a corporation is not doing business is the subject of a telegram from the Department (p. 638).

(NOTE.—The page references are to our War Tax Service, 1919, wherein the foregoing rulings and regulations are printed in full.)

STAMP TAXES

For preceding references, see 4 Corporation Journal, page 11.

Regulations 55 are reprinted in full (pgs. 728 to 781).

A decision by a United States District Court holds preferred stock of one class and common stock issued on exercise of right of exchange by holders of preferred stock of another class to be an "original issue" (pgs. 782 to 784).

A letter by a Deputy Commissioner relates to tax on stock transfers from name of decedent to executor or administrator (p. 785).

A Treasury Decision makes additional regulations relating to stamp tax on foreign insurance policies (pgs. 785 to 788).

A Treasury Decision holds that indemnity bonds given to secure the United States against lost checks issued on war risk insurance are not subject to tax (p. 788).

Treasury Decisions make additional regulations relating to stamp tax on bonds, indemnity and surety, powers of attorney and on bonds of indebtedness (p. 789).

(NOTE.—The page references are to our War Tax Service, 1919, wherein the foregoing rulings are printed in full.)

EXCISE TAXES

For preceding references, see 4 Corporation Journal, page 30.

Regulations 56 relating to collection of tax on motion picture films are printed in full (pgs. 989 to 995).

A Treasury Decision relates to the records to be kept showing the amount of sales of taxable articles for each month (p. 995).

A Treasury Decision relates to resale of parts by an automobile manufacturer (p. 996).

According to a telegram from the Commissioner, certain religious emblems are liable to tax (p. 996).

A letter from the Commissioner sets forth certain articles that are not subject to tax as toilet articles or medicinal preparations (p. 996).

A letter by a Deputy Commissioner relates to sale of accessories other than in connection with automobiles (p. 999).

A telegram relates to "road locomotives" as tractors (p. 1000).

A letter by the Commissioner states that there is no refund of tax on taxable sales of parts and accessories to a jobber (p. 1000).

A Treasury Decision contains administrative provisions and rulings on excise taxes on sales by the manufacturer (pgs. 1001 to 1006).

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According to a Treasury Decision sales of taxable articles to a state or political subdivision unless specifically exempted, are liable to tax (p. 1007).

A Treasury Decision amends Article V of Regulations 44 regarding sales by agents (p. 1008).

A Treasury Decision modifies certain provisions of the regulations relating to sale of tires, inner tubes or accessories and to manufacturers of automobile trucks (p. 1008).

A letter by a Deputy Commissioner further explains the provisions in regard to automobile parts (p. 1010).

According to telegrams from a Deputy Commissioner, revised certificates provided by Treasury Decision T. D. 2915 need not be procured covering past sales but must be used on sales on or after September 1, 1919 (p. 1010).

(NOTE.—The page references are to our War Tax Service, 1919, wherein the foregoing rulings and regulations are printed in full.)

UTILITIES AND INSURANCE

For preceding references, see 4 Corporation Journal, page 30.

Regulations 57 relating to the tax on telegraph, telephone, radio and cable facilities are printed in full (pgs. 1161 to 1174).

A Treasury Decision issues regulations superseding Articles 13 and 15 of Regulations 49 (pgs. 1174 to 1180).

Regulations 58 relating to tax on the issuance of insurance policies is set forth in full (pgs. 1189 to 1197).

(NOTE.—The page references are to our War Tax Service, 1919, wherein the foregoing rulings and regulations are printed in full.)

ADMISSIONS AND DUES

Regulations No. 43 revised, relating to tax on admissions are set forth in full (pgs. 1341 to 1400).

(NOTE.—The page references are to our War Tax Service, 1919, wherein the foregoing rulings and regulations are printed in full.)

NEW YORK INCOME TAX

For preceding references, see 4 Corporation Journal, page 31.

A letter by the Comptroller relates to effect of the Personal Income Tax Law on the 5% additional inheritance tax in its relation to the investment tax and the personal property taxes (p. 58).

An opinion by the Attorney General relates to gross income, investments, secured debts and mortgages (pgs. 59 to 61).

An opinion by the Attorney General relates to exemptions (p. 62).

Regulations relating to deducting and withholding at the source are printed in full (pgs. 63 to 65).

An opinion by the Attorney General of New Jersey relates to the constitutionality of provisions of the act in taxing non-residents (pgs. 66 to 69).

A ruling by the Commissioner relates to wages of mainers as income from sources within the state (p. 69).

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A special ruling by the Comptroller relates to investment tax, personal property tax and an additional 5% inheritance tax (p. 69).

A letter from the Comptroller relates to the status of pensions (p. 70).

Information at the source is the subject of a special ruling (p. 71).

A letter from the Comptroller relates to wages of mariners employed on vessels registered in New York but owned by a foreign corporation (p. 71).

A special ruling relates to the effect upon withholding of change of resident to non-resident status (p. 72).

Salary earned prior to January 1, 1919, but paid subsequent thereto, is the subject of a special ruling (p. 72).

A decision of a United States District Court relates to application of New York law to non-residents (pgs. 73 to 79).

A letter from the Attorney General relates to the effect of the decision in the case of Yale & Towne Manufacturing Co. v. Travis (p. 79).

A letter by the Comptroller relates to income from sources within the state and non-residents' profits arising from sales on New York exchanges (p. 80).

(NOTE.—The page references are to our New York Income Tax Service, 1919-1920, which reports all the official rulings, regulations, opinions and decisions pertaining to the Personal and Corporation Income Tax Laws of New York.)

FEDERAL RESERVE ACT

For preceding references, see 4 Corporation Journal, page 12.

An opinion by the Law Department relates to acceptance of drafts drawn abroad and secured by foreign warehouse receipts (pgs. 75 to 76).

Amendments to the Banking Laws of California, Delaware, Iowa, Maine, Missouri, Pennsylvania, Utah, Vermont and Washington are set forth (pgs. 76 to 85).

A letter from Governor Harding states that the term "readily marketable staples" does not include automobiles (p. 86).

Rulings of the board relate to renewal acceptances and acceptances of drafts secured by warehouse receipts (p. 87).

New Georgia Banking Laws are reprinted (p. 88).

(NOTE.—The page references are to our Federal Reserve Act Service, Volume 5, which reports all rulings and regulations of the Federal Reserve Board.)

FEDERAL TRADE COMMISSION

For preceding references, see 4 Corporation Journal, page 12.

The opinion of the United States Circuit Court of Appeals for the Second Circuit in the case of the Federal Trade Commission v. Anderson Gratz and Benjamin Gratz, and others, is reported in full (pgs. 147 to 150).

The Attorney General has issued an opinion in regard to price fixing as a plan for stabilizing prices in the basic industries (pgs. 151 to 156).

A brief summary of the decision of the United States District Court for the Western District of Pennsylvania, involving the power of the Federal Trade Commission to investigate production costs, is reported (pgs. 157 to 158).

A number of complaints have been added to the docket since our last report (supplementary pages 97 to 119).

(NOTE.—The page references are to our Federal Trade Commission Service.)

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PUBLICATIONS

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

NEW YORK STATE PERSONAL INCOME TAX LAW, text in full of the act passed by the Legislature, April 19, 1919, and approved by the Governor, May 14, 1919.

NEW YORK CORPORATION INCOME TAX LAW, as amended by the 1919 Legislature.

WAR REVENUE ACT, 1918, is the title of our pamphlet, which contains a complete copy of the text of the new federal tax law, approved by the President February 24, 1919.

ISSUANCE, TRANSFER AND REGISTRATION OF CORPORATE STOCK is the title of a pamphlet printed to supply the demand for information on these subjects.

THE CORPORATION JOURNAL issued monthly except in July and August.

DISCUSSION OF PRACTICE AND PROCEDURE UNDER THE EXPORT TRADE ACT, issued by the Federal Trade Commission.

INCOME TAX PRIMER, prepared by the Bureau of Internal Revenue and reproduced as a supplement to the Income Tax Service, 1919, of The Corporation Trust Company.

EXCESS PROFITS TAX PRIMER, prepared by the Bureau of Internal Revenue, and reproduced as a supplement to the War Tax Service, 1918, of The Corporation Trust Company.

FEDERAL TRADE COMMISSION ACT AND THE CLAYTON ACT are reprinted from The Corporation Trust Company's Federal Trade Commission Service.

BUSINESS CORPORATIONS UNDER THE LAWS OF DELAWARE is the title of a pamphlet containing the advantages of the law, statutory requirements and forms, including a description of shares without par value. The General Corporation Laws are published in a separate booklet.

THE LAWS OF MARYLAND relating to Business Corporations are available in pamphlet form.

THE GENERAL CORPORATION ACT OF NEW JERSEY, as published by the Department of State, may be secured at any of our offices.

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BUSINESS CORPORATIONS UNDER THE LAWS OF MAINE is the title of a pamphlet which contains a description of advantages of incorporation under Maine laws, features of shares without par value, statutory requirements and forms. The text of the statutes relating to business corporations is also available in a separate pamphlet.

NEW YORK NON-PAR VALUE LAW, a reprint of Corporation Journal No. 35, contains a copy of the New York non-par value law and a copy of the certificate of incorporation of the Wisconsin Edison Company, the first large company incorporated thereunder.

EXTRACTS FROM THE STATUTES OF THE VARIOUS STATES RELATING TO THE ADMISSION OF FOREIGN BUSINESS CORPORATIONS may be had by counsel who are interested in the qualification of a particular corporation in a State or group of States. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the States under consideration.

SOME IMPORTANT MATTERS FOR OCTOBER AND NOVEMBER

This calendar does not purport to cover general taxes or reports to other than State officials or those we have been officially advised are not required to be filed. The State Report and Tax Service maintained by The Corporation Trust Company System sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information, forms, practice and rulings.

ALASKA	Annual license on certain occupations due on or before November 1—Domestic and Foreign Corporations.
GEORGIA	Certified statement for registration due on or before November 1—Domestic and Foreign Corporations.
NEW MEXICO	Annual franchise tax due on or before November 30—Domestic and Foreign Corporations.
NEW YORK	Capital stock reports due between November 1 and December 15—Domestic and Foreign Corporations. Annual franchise tax on income of manufacturing and mercantile corporations due between November 1 and January 1—Domestic and Foreign Manufacturing and Mercantile Corporations.
NORTH CAROLINA	Annual franchise fee due on or before first day of December or any time after October 15—Foreign Corporations. Annual franchise tax due on or before first day of October or any time after August 15—Domestic Corporations.
UTAH	Corporation license tax due between November 15 and December 15—Domestic and Foreign Corporations.

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▽ ▽ ▽

WE assist attorneys in the organization of corporations by supplying drafts of charters, by-laws, and minutes, by furnishing incorporators, and by holding incorporators' meetings, by attending to the filing of papers, to the payment of fees and to all other details connected therewith. After organization we supply the principal office required to be kept in the state, act as agent for service of process and as custodian of the duplicate stock ledger. Our service includes notification to the attorney of all reports, taxes, and other matters to be attended to in order to keep the corporation in good standing in the state.

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